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FILED

JAN 28 1998

AT 8:30 _____ M
 WILLIAM T. WALSH
 CLERK

THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY

THE DOCKET
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 WILLIAM T. WALSH CLERK
 (Deputy Clerk)

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLEAVELAND INDUSTRIAL CENTER,
 AND EVERS DEN L. CLARK, JR.,

Defendants.

Civil Action No. 94-5500(WGB)

Hon. William G. Bassler

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint ("Complaint") in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,



42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Fabritex Mills, Inc. Superfund Site in Long Valley, Washington Township, Morris County, New Jersey ("the Site").

B. The defendants ("Settling Defendants") that have entered into this Consent Decree ("Consent Decree") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. For purposes of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to the jurisdiction of this Court or venue of this District. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. The Complaint states claims against Settling Defendants upon which relief may be granted.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors, heirs and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever

terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA will incur and pay in connection with the Site after the date of lodging of this Consent Decree.

h. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

i. "Owner Settling Defendant" shall mean Cleaveland Industrial Center.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and the Settling Defendants.

l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred and paid in connection with the Site prior to the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

m. "Plaintiff" shall mean the United States.

n. "Section" shall mean a portion of this Consent Decree identified by a roman numeral. --

o. "Settling Defendants" shall mean Cleaveland Industrial Center and Eversden L. Clark, Jr.

p. "Site" shall mean the Fabritex Mills, Inc. Superfund site, encompassing approximately 18 acres, located at 20 Parker Road in Long Valley, Washington Township, Morris County, New Jersey, and designated as Block 60, Lot 14 on the tax map of Washington Township.

q. "State" shall mean the State of New Jersey.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Within 45 days of entry of this Consent Decree, Settling Defendants shall cause to be paid to the EPA Hazardous Substance Superfund \$285,000 in reimbursement of Past Response Costs. Interest on this amount to be paid under Section V shall begin to accrue as of the date this Consent Decree is lodged with the Court. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the USAO File Number, the EPA Region and Site Spill ID Number "026Y", and DOJ Case Number 90-11-3-1386. Payment shall be made in accordance with instructions provided to the State and Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of New Jersey following entry of the Consent Decree. These instructions must be transmitted to the State and Settling Defendants within ten (10) business days of entry of this Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to Ronald Gherardi, Chief, Financial Management Branch, Office of Policy and Management, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, New York, 10007-1866.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

5. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), is not received

when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. Stipulated Penalty.

a. If any amount due to EPA under this Consent Decree is not paid by the required date, Settling Defendants shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 5, as follows:

For each day, or portion thereof, that Settling Defendants fail to perform, fully, any requirement of this Consent Decree in accordance with the schedule established pursuant to this Consent Decree, Settling Defendants shall be liable as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Violation Per Day</u>
76th thru 80th day	\$3,000
81st thru 90th day	\$6,000
91st thru 105th day	\$9,000
106th thru 120st day	\$12,000
121st and beyond	\$20,000

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

EPA - Region 2
 Attention: Superfund Accounting
 P.O. Box 3360188M
 Pittsburgh, PA 15251

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number "026Y", the USAO File Number, and DOJ Case Number 90-11-3-1386. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XI. (Notices and Submissions) and to Ronald Gherardi, Chief, Financial Management Branch, Office of Policy and Management, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, New York, 10007-1866.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall

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prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to the reasonable costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

9. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

11. Covenant Not to Sue by United States. In consideration of the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 12 (Reservation of Rights by United States), the United States on behalf of EPA covenants not to sue Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs or Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

12. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to the following:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c. criminal liability;

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Reponse Costs.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

13. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred;

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site; and

d. any claim under the Tucker Act, 28 U.S.C. §1491, or at common law, arising out of or relating to any response activities undertaken or to be undertaken at the Site, and any institutional controls or other restrictions on the use or enjoyment of the Site.

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

15. Except as otherwise provided herein, nothing in this Consent Decree shall be construed to create any rights in, or grant

any cause of action to, any person not a Party to this Consent Decree. Except as otherwise provided herein, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

16. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs and Future Response Costs.

17. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

X. RETENTION OF RECORDS

18. Until 6 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

19. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If one or more of the Settling Defendants assert such a privilege, it shall provide DOJ or EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the

author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

20. By signing this Consent Decree, Eversden L. Clark, in his personal capacity and in his capacity as a general partner of Cleaveland Industrial Center, certifies that he and Cleaveland Industrial Center have:

a. conducted a thorough, comprehensive, good faith search for documents, and have fully and accurately disclosed, to the best of their knowledge, to the United States, all information currently in the possession of Eversden L. Clark or Cleaveland Industrial Center, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied, to the best of their knowledge, with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

21. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice

requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Chief, New Jersey Superfund Branch
Office of Regional Counsel
U.S. EPA, Region II
290 Broadway - 17th Floor
New York, New York 10007-1866
attn: Fabritex Mills, Inc. Superfund Site Attorney

and

Chief, Response & Prevention Branch
Emergency & Remedial Response Division
2890 Woodbridge Avenue
Edison, New Jersey 08837-3679

As to Settling Defendants:

Henry A. Larner, Esq.
Budd Larner Gross Rosenbaum Greenberg & Sade
150 John F. Kennedy Parkway, CN 1000
Short Hills, New Jersey 07078-0999

XII. RETENTION OF JURISDICTION

22. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

23. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

24. This Consent Decree shall not be effective as a final order until after a thirty (30) public-comment period, consistent with Section 122(d) of CERCLA, 42 U.S.C. §9622(d), and 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the subsequent entry of this Consent Decree without further notice.

25. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any of the Parties and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIV. EFFECTIVE DATE

26. The effective date of this Consent Decree shall be the date upon which it is entered as a final order by the Court, except as provided otherwise.

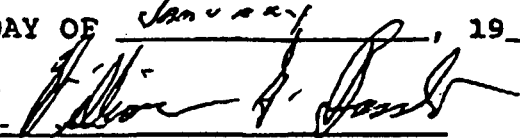
XV. SIGNATORIES/SERVICE

27. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

28. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

29. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS 28th¹² DAY OF January, 1998

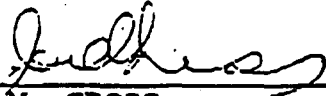

United States District Judge


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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Cleaveland Industrial Center et al., Civil Action No. 94-5500(WGB), relating to the Fabritex Mills, Inc., Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 9/29/97


JOEL M. GROSS
Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530


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District of New Jersey

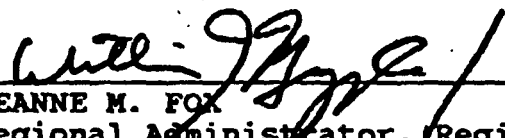
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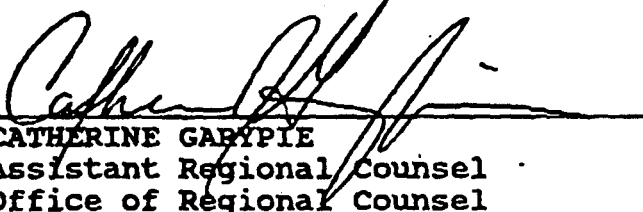
SUSAN C. CASSELL
Assistant United States Attorney
District of New Jersey
United States Attorney's Office
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Newark, New Jersey 07102

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DATE

9/25/97


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U.S. Environmental Protection
Agency
290 Broadway - 26th Floor
New York, New York 10007-1866


CATHERINE GARIPE
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region II
290 Broadway - 17th Floor
New York, New York 10007-1866

15

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Cleaveland Industrial Center et al., Civil Action No. 94-5500(WGB), relating to the Fabritex Mills, Inc., Superfund Site.

FOR DEFENDANT
CLEAVELAND INDUSTRIAL CENTER

Date: September 23, 1997

Signature

Evered L. Clark Jr. Partner

Name

EVERED L. CLARK JR.

Address

4915 WHITEFIELD ROAD

DURHAM NC 27707

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Henry A Lerner

Title:

Address:

Budd Lerner et al
150 JFK Parkway
Short Hills NJ 07078

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Cleaveland Industrial Center et al., Civil Action No. 94-5500(WGB), relating to the Fabritex Mills, Inc., Superfund Site.

FOR DEFENDANT
EVERSDEN L. CLARK, JR.

Date: September 23, 1997

Signature

Everald L. Clark Jr.

Name

EVERSDEN L. CLARK, JR.

Address

4915 Whitfield Road

Durham NC 27707

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Henry A. Lerner

Title:

Address:

Budd Lerner et al
150 JFK Parkway
Short Hills, NJ 07078